

REMARKS

The Office Action dated September 6, 2006 has been carefully considered. All of the rejections are based on Lambrecht Patent No. 6, 482,235 either alone or in combination with other references. There is a fundamental deficiency in Lambrecht which is not remedied by any of the other cited references. This fundamental difference is that, as disclosed for example at column 20, lines 10-29, the thermal energy used by Lambrecht is applied to a sealing means comprised of a thermally adherent material that adheres to surrounding tissues upon the application of heat. In marked contrast, each of the claims is directed to the use of thermal energy applied directly to the tissue to close the opening created for treatment of the spine.

None of the remaining references is relied upon to show direct heating of the spine. Rather, Underwood is relied upon for use of a syringe in an entirely different process, Froning is relied upon for its disclosure of removing at least a portion of the nucleus pulposus, lining the space created with a bladder or other material and filling the space with material, Carr is relied upon for use of intestinal submucosa for implantation within a body and has nothing to do with treatment of the spine, Felt is relied upon for its disclosure of an interpenetrating polymer network and has nothing to do with treatment of the spine and Michelson teaches irrigation of spinal disc interspace to remove disc fragments. Clearly, none of the references combined with Lambrecht contain any disclosure of direct heating of spinal tissue to close an opening. Thus, none of the references which have been combined with Lambrecht contain any disclosure which remedies the deficiency of Lambrecht.

The difference between Lambrecht and the invention of the present application is not trivial. Lambrecht relies upon the introduction of foreign materials into a delicate area of the body, the spine. The reaction of any given human being to foreign materials introduced into his or her body can never be predicted. It is also preferable to avoid introducing foreign materials if possible.

Plainly, Lambrecht did not recognize that direct application of thermal energy to spinal tissue could be used in the manner described in claims in the present application. Thus, it is believed that all of the claims in the present application are patentable over Lambrecht taken alone or Lambrecht in combination with any of the other references with which it has been combined to reject the claims in the present application.

It is believed that this application is in condition for allowance and a favorable action is respectfully solicited.

The Commissioner is authorized to charge Orrick, Herrington & Sutcliffe's Deposit Account No. 150665 in the amount of **\$510.00** to cover the excess claims fee. The Commissioner is also authorized to charge Orrick, Herrington & Sutcliffe's Deposit Account No. 150665 for any other fees required.

Dated: March 1, 2007

Respectfully submitted,

ORRICK, HERRINGTON & SUTCLIFFE LLP

By: 
James W. Geriak, Reg No. 20,233

4 Park Plaza, Suite 1600
Irvine, CA 92614
949/567-6700 Telephone
949/567-6710 Facsimile